



30 Bank Street
New Britain, CT
06050-0350

Testimony Submitted by Kathleen D. Hayes on March 1, 2022
before the Committee on Humans Service
on behalf of the Connecticut Bar Association Elder Law Section and the Connecticut Chapter of the
National Academy of Elder Law Attorneys

**In SUPPORT of
Senate Bill 195**

**AN ACT INCREASING THE MINIMUM AMOUNT OF ASSETS THAT MAY BE RETAINED
BY THE SPOUSE OF AN INSTITUTIONALIZED MEDICAID RECIPIENT**

My name is Kathleen D. Hayes, and I am an elder law attorney practicing in Glastonbury, Connecticut. I have the distinct privilege of submitting this testimony on behalf of the Elder Law Section of the Connecticut Bar Association and the Connecticut Chapter of the National Academy of Elder Law Attorneys (CT NAELA), in **support** of Senate Bill 195: An Act Increasing the Minimum Amount of Assets that May Be Retained the Spouse of An Institutionalized Medicaid Recipient.

This bill permits the spouse of an individual requiring long-term care ("community spouse") to mitigate financial impoverishment by increasing the minimum amount of assets that the community spouse is permitted to keep from \$27,480 to \$50,000.

Under the current law, lower and middle class families do not receive the same financial protections as upper middle class families, leading to financial impoverishment. Moreover, the current law disproportionately discriminates against women, often forcing them into destitution. The passage of Senate Bill 195 will take a significant step toward treating all Medicaid applicants fairly and equally.

Overview of community spouse Protected Amount and Case Studies: When an individual requires long-term care, the Connecticut Department of Social Services follows the steps set forth below in determining financial eligibility for Medicaid. The case studies demonstrate the inequity between families of varying means under our current laws. Under the case studies, Harold is the ill spouse applying for Medicaid long-term care. Mary is the community spouse.

Medicaid Financial Eligibility Determination Rules (Married Couple)	Case Study A: Couple's Assets of \$300,000	Case Study B: Couple's Assets of \$100,000	Case Study C: Couple's Assets of \$50,000
1. DSS divides the couple's countable assets in half, as of the date that the ill spouse first needed an institutional level of care.	Harold is allocated \$150,000. Mary is allocated \$150,000.	Harold is allocated \$50,000. Mary is allocated \$50,000.	Harold is allocated \$25,000. Mary is allocated \$25,000.
2. The ill spouse retains \$1,600. The community spouse retains a <u>minimum</u> of \$27,480 and a <u>maximum</u> of \$137,400. The amount that the community spouse is permitted to keep is known as the community	Harold can keep \$1,600. Mary can keep the maximum amount of \$137,400.	Harold can keep \$1,600. Mary can keep \$50,000.	Harold can keep \$1,600. Mary can keep the minimum amount of \$27,480, however, Senate Bill 195 permits Mary to keep \$50,000.



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spouse Protected Amount ("CSPA").	Senate Bill 195 does not change this outcome.	Senate Bill 195 does not change this outcome.	
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As exemplified in case studies B and C above, Senate Bill 195 permits couples with combined resources of \$99,000 or less to maintain a minimum of \$50,000, as opposed to a minimum of \$27,480. Permitting couples to maintain up to an additional \$22,520.00 (which represents the difference between \$50,000 and \$27,480), though a modest sum, is life preserving for couples who are in the throes of managing a long-term illness alongside their daily financial obligations.

In particular, this modest sum can be life preserving for women, who are often disparately impacted by the long-term care financial eligibility rules. Statistically, women often outlive their male counterparts and as such, women are more often in the role of community spouse. For many middle income married couples, Social Security payments are the sole or primary source of income. When one spouse dies, the surviving spouse receives the larger of the monthly Social Security Payments. In many cases, the loss of the spouse's income forces the spouse to move out of the family home, incur credit card liabilities, or otherwise become financially unable to sustain a reasonable standard of living. Increasing the minimum community spouse protected amount to \$50,000 will help to reduce the disparate and oft devastating impact on women.

Importantly, while Senate Bill 195 seeks to increase the minimum community spouse protected amount, historically, legislation has been proposed to permit the community spouse to keep up to the maximum allowable amount of \$137,400. Increasing the maximum community spouse protected amount would go much further in protecting the overall welfare of lower and middle class families and women. Prior efforts to increase the maximum amount of allowable assets have been met with opposition from the Connecticut Department of Social Services, which contends that increasing the maximum limits would bear a negative fiscal impact. However, the Connecticut Department of Social Services has never substantiated this contention. In fact, increasing the minimum and/or maximum amount of allowable assets would yield cost savings for the state, as set forth below.

Arguments Supporting Passage of Senate Bill 195: The Elder Law Section of the Connecticut Bar Association and CT NAELA submit the following arguments in support of Senate Bill 195:

- A. Senate Bill 195 Preserves the Congressional Intent of MCCA.** In 1988, Congress passed the Medicare Catastrophic Coverage Act ("MCCA"). The purpose of MCCA is to prevent the community spouse from becoming impoverished when his/her spouse requires long-term care. Under our current laws, the path to impoverishment is paved for lower and middle class families. Countless couples are forced to quickly expend their modest resources, often on items or services that are not otherwise needed for the couple's welfare. Senate Bill 195 provides a safety net to middle class families by allowing the community spouse to retain up to \$50,000 of the couple's modest savings to sustain their living expenses. In this way, our State will at last advance closer to upholding the promise of MCCA.
- B. Senate Bill 195 Does Not Have a Fiscal Impact.** The proposed legislation would not impose any financial burden on the State. The funds which a community spouse is forced to "spend down" are not mandated to be spent on care, or otherwise paid to the State of Connecticut. Rather, the community spouse can spend the funds in any manner he/she chooses. Thus, under the current law, the community spouse is forced to spend for the sake of spending. Senate Bill 195 enables families to *save* for the sake of preserving their home and personal welfare. Whether the community spouse is allowed to keep the minimum amount of \$27,480 or \$50,000—or the



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maximum amount of \$137,400—the State will begin paying for long-term care at the same point in time.

Moreover, legislative history demonstrates that this bill would not bear a fiscal impact. In 2010, the Connecticut Legislature passed a bill to increase the maximum amount of allowable assets, which was codified in C.G.S. 17b-261k (PA 10-73). However, the life of such statute was short-lived, as it was rescinded through a Budget Implementer Bill in 2011. Despite the Department of Social Services' attestations that the enacted statute would cost millions of dollars, the Department never provided any documentation substantiating these claims. In fact, at a legislative hearing held on March 5, 2011 to repeal the Public Act, the then-serving Commissioner Starkowski stated that the alleged \$30 million dollar impact was "intuitive" and based on "worker experience." In opposing any legislation pertaining to increasing either the minimum or maximum amount of allowable assets, the Department of Social Services has never substantiated its claims as to even one dollar of additional costs.

- C. Senate Bill 195 Will Save the State Money.** Senate Bill 195 will, in fact, accord cost savings to the State. This legislation will reduce Fair Hearings, which are often requested to increase the resources that a community spouse is permitted to keep, up to \$137,400. The reduction of Fair Hearings will save valuable time and resources. Moreover, by enabling the community spouse to keep a minimum of \$50,000, he/she is better positioned to financially meet his/her personal needs without relying upon public resources, such as Medicaid, Food Assistance, Energy Assistance, or Long-Term Care services for him/herself.
- D. Senate Bill 195 Protects Lower and Middle Class Families and Women.** Senate Bill 195 is not seeking special treatment for lower and middle class families and women. Conversely, Senate Bill 195 aims to provide *equal* treatment to all Medicaid applicants, according the same protections enjoyed by more financially stable couples who are always permitted to keep up to the maximum allowable amount of \$137,400.

On behalf of the Elder Law Section of the Connecticut Bar Association and CT NAELA, I thank you for your time and consideration of this most important issue, and strongly urge the members of this Committee to act favorably with regard to Senate Bill 195.